



STATE OF MONTANA REQUEST FOR PROPOSAL (RFP)

RFP Number: 215004	RFP Title: Business Case for Montana's Nutrient Trading Program	
RFP Response Due Date and Time: August 22, 2014 See Section 1.6.4	Number of Pages: 24	Issue Date: August 01, 2014

ISSUING AGENCY INFORMATION

Procurement Officer: Vicki Woodrow Contracts Officer/Manager Phone: 406-444-3101 Email: vwoodrow@mt.gov	Department of Environmental Quality Phone: (406) 444-3101 Fax: (406) 444-1804 TTY Users, Dial 711
Website: http://vendor.mt.gov/	

INSTRUCTIONS TO OFFERORS

Return Sealed Proposal to: PHYSICAL ADDRESS: Department of Environmental Quality Room 3, Metcalf Building 1520 East Sixth Avenue Helena, MT 59601	MAILING ADDRESS: Department of Environmental Quality Room 3, Metcalf Building PO Box 200901 Helena, MT 59601	Mark Face of Envelope/Package with: RFP Number: 215004 RFP Response Due Date: August 22, 2014
Special Instructions:		

OFFERORS MUST COMPLETE THE FOLLOWING

Offeror Name/Address:	<hr/> (Name/Title) <hr/> <hr/> (Signature) <hr/> <small>Print name and title and sign in ink. By submitting a response to this RFP, offeror acknowledges it understands and will comply with the RFP specifications and requirements.</small>
Type of Entity (e.g., corporation, LLC, etc.)	Offeror Phone Number:
Offeror E-mail Address:	Offeror FAX Number:

OFFERORS MUST RETURN THIS COVER SHEET WITH RFP RESPONSE

TABLE OF CONTENTS

	<u>PAGE</u>
Instructions to Offerors	3
Schedule of Events	4
Section 1: Introduction and Instructions	5
1.1 Introduction	5
1.2 Contract Period	5
1.3 Single Point of Contact.....	5
1.4 Required Review.....	5
1.5 General Requirements	6
1.6 Submitting a Proposal	6
1.7 Costs/Ownership of Materials.....	7
Section 2: RFP Standard Information	8
2.1 Authority.....	8
2.2 Offeror Competition.....	8
2.3 Receipt of Proposals and Public Inspection.....	8
2.4 Classification and Evaluation of Proposals.....	8
2.5 State's Rights Reserved.....	9
Section 3: Project Specifications or Scope of Services.....	10
3.1 Background.....	8
3.2 General Requirement.....	8
Section 4: Offeror Qualifications	11
4.1 State's Right to Investigate and Reject.....	11
4.2 Offeror Qualifications	11
Section 5: Cost Proposal.....	12
Section 6: Evaluation Process	13
6.1 Basis of Evaluation.....	13
6.2 Evaluation Criteria.....	14
Appendix A - Standard Terms and Conditions	15
Appendix B - Contract	16

INSTRUCTIONS TO OFFERORS

It is the responsibility of each offeror to:

Follow the format required in the RFP when preparing your response. Provide responses in a clear and concise manner.

Provide complete answers/descriptions. Read and answer **all** questions and requirements. Proposals are evaluated based **solely** on the information and materials provided in your written response.

Use any forms provided, e.g., cover page, budget form, certification forms, etc.

Submit your response on time. Note all the dates and times listed in the Schedule of Events and within the document. Late proposals are **never** accepted.

The following items MUST be included in the response.
Failure to include ANY of these items may result in a nonresponsive determination.

- ☒ **Signed Cover Sheet**
- ☒ **Signed Addenda (if appropriate) in accordance with Section 1.4.3**
- ☒ **Correctly executed State of Montana "Affidavit for Trade Secret Confidentiality" form, if claiming information to be confidential or proprietary in accordance with Section 2.3.1.**
- ☒ **In addition to a detailed response to all requirements within Sections 3, 4, and 5, offeror must acknowledge that it has read, understands, and will comply with each section/subsection listed below by initialing the line to the left of each. If offeror cannot meet a particular requirement, provide a detailed explanation next to that requirement.**

_____	Section 1, Introduction and Instructions
_____	Section 2, RFP Standard Information
_____	Section 3.1, Background
_____	Section 4.1, State's Right to Investigate and Reject
_____	Section 6, Evaluation Process
_____	Appendix A, Standard Terms and Conditions
_____	Appendix B, Contract

SCHEDULE OF EVENTS

EVENT

DATE

RFP Issue Date..... August 1, 2014

Deadline for Receipt of Written Questions August 8, 2014

Deadline for Posting Written Responses to the State's Website August 13, 2014

RFP Response Due Date August 22, 2014

Intended Date for Contract Award September 12, 2014

*The dates above identified by an asterisk are included for planning purposes. These dates are subject to change.

SECTION 1: INTRODUCTION AND INSTRUCTIONS

1.1 INTRODUCTION

The STATE OF MONTANA, Department of Environmental Quality ("State") is seeking a contractor to develop a business case to determine the viability of a Nutrient Trading Program for Montana. A more complete description of the services to be provided is found in Section 3.

1.2 CONTRACT PERIOD

The contract period is from contract execution through December 31, 2014, inclusive. Due to the nature of the services and the limited timeframe, no contract extension for this work will be considered.

1.3 SINGLE POINT OF CONTACT

From the date this Request for Proposal (RFP) is issued until an offeror is selected and announced by the procurement officer, **offerors shall not communicate with any state staff regarding this procurement, except at the direction of the procurement officer** in charge of the solicitation. Any unauthorized contact may disqualify the offeror from further consideration. Contact information for the single point of contact is:

Procurement Officer: Vicki Woodrow
Telephone Number: 406-444-3101
Fax Number: 406-444-1804
E-mail Address: vwoodrow@mt.gov

1.4 REQUIRED REVIEW

1.4.1 Review RFP. Offerors shall carefully review the entire RFP. Offerors shall promptly notify the procurement officer identified above via e-mail or in writing of any ambiguity, inconsistency, unduly restrictive specifications, or error that they discover. In this notice, the offeror shall include any terms or requirements within the RFP that preclude the offeror from responding or add unnecessary cost. Offerors shall provide an explanation with suggested modifications. The notice must be received by the deadline for receipt of inquiries set forth in Section 1.4.2. The State will determine any changes to the RFP.

1.4.2 Form of Questions. Offerors having questions or requiring clarification or interpretation of any section within this RFP must address these issues via e-mail or in writing to the procurement officer listed above on or before **3:00 p.m. Mountain Daylight Time, August 08, 2014**. Offerors are to submit questions using the Vendor RFP Question and Answer Form available on the OneStop Vendor Information website at: <http://svc.mt.gov/gsd/OneStop/GSDDocuments.aspx> or by calling (406) 444-2575. Clear reference to the section, page, and item in question must be included in the form. Questions received after the deadline may not be considered.

1.4.3 State's Response. The State will provide a written response by **close of business August 13, 2014**, to all questions received by the date noted in Section 1.4.2. The State's response will be by written addendum and will be posted on the State's website with the RFP at <http://svc.mt.gov/gsd/OneStop/SolicitationDefault.aspx> by the close of business on the date listed. Any other form of interpretation, correction, or change to this RFP will not be binding upon the State. **Offerors shall sign and return with their RFP response an Acknowledgment of Addendum for any addendum issued.**

1.5 GENERAL REQUIREMENTS

1.5.1 Acceptance of Standard Terms and Conditions/Contract. *By submitting a response to this RFP, offeror accepts the standard terms and conditions and contract set out in Appendices A and B, respectively. Much of the language included in the standard terms and conditions and contract reflects the requirements of Montana law.*

Offerors requesting additions or exceptions to the standard terms and conditions, or to the contract terms, shall submit them to the procurement officer listed above by the date specified in Section 1.4.2. A request must be accompanied by an explanation why the exception is being sought and what specific effect it will have on the offeror's ability to respond to the RFP or perform the contract. The State reserves the right to address nonmaterial requests for exceptions to the standard terms and conditions and contract language with the highest scoring offeror during contract negotiation.

The State shall identify any revisions to the standard terms and conditions and contract language in a written addendum issued for this RFP. The addendum will apply to all offerors submitting a response to this RFP. The State will determine any changes to the standard terms and conditions and/or contract.

1.5.2 Resulting Contract. This RFP and any addenda, the offeror's RFP response, including any amendments, a best and final offer (if any), and any clarification question responses shall be incorporated by reference in any resulting contract.

1.5.3 Understanding of Specifications and Requirements. By submitting a response to this RFP, offeror acknowledges it understands and shall comply with the RFP specifications and requirements.

1.5.4 Offeror's Signature. Offeror's proposal must be signed in ink by an individual authorized to legally bind the offeror. The offeror's signature guarantees that the offer has been established without collusion. Offeror shall provide proof of authority of the person signing the RFP upon State's request.

1.5.5 Offer in Effect for 120 Calendar Days. Offeror agrees that it may not modify, withdraw, or cancel its proposal for a 120-day period following the RFP due date or receipt of best and final offer, if required.

1.6 SUBMITTING A PROPOSAL

1.6.1 Organization of Proposal. Offerors must organize their proposal into sections that follow the format of this RFP. Proposals should be bound, and must include tabbed dividers separating each section. Proposal pages must be consecutively numbered.

All subsections not listed in the "Instructions to Offerors" on page 3 require a response. Restate the section/subsection number and the text immediately prior to your written response.

Unless specifically requested in the RFP, an offeror making the statement "Refer to our literature..." or "Please see www.....com" may be deemed nonresponsive or receive point deductions. If making reference to materials located in another section of the proposal, specific page numbers and sections must be noted. **The Evaluator/Evaluation Committee is not required to search through the proposal or literature to find a response.**

The State encourages offerors to use materials (e.g., paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content. Offerors are encouraged to print/copy on both sides of each page.

1.6.2 Failure to Comply with Instructions. Offerors failing to comply with these instructions may be subject to point deductions. Further, the State may deem a proposal nonresponsive or disqualify it from further

consideration if it does not follow the response format, is difficult to read or understand, or is missing requested information.

1.6.3 Multiple Proposals. Offerors may, at their option, submit multiple proposals. Each proposal shall be evaluated separately.

1.6.4 Copies Required and Deadline for Receipt of Proposals. The State prefers proposals to be submitted electronically. Proposals must be submitted to the email address of the Procurement Officer noted above and be received no later than **2:00 p.m. Mountain Daylight Time on August 22, 2014**. The State email system will not allow files larger than 10 megabytes to be sent as an attachment to an email. Therefore, if Offeror's documents are larger than 10 megabytes, Offeror should use the State's File Transfer service (<https://transfer.mt.gov/>) and use an existing account or create one in ePass to facilitate proposal transmission via the service. Please direct any questions related to this service to the Procurement Officer noted above. If any confidential materials are included in the proposal, in accordance with the requirement of Section 2.3.2, this information must be submitted under a separate email or File Transfer service transmission.

Should Offeror choose to send an electronic copy on compact disc (CD) or universal serial bus (USB) flash drive via regular mail, it must be in Microsoft Word or portable document format (PDF). ***The electronic media must be received prior to 2:00 p.m., Mountain Daylight Time, on August 22, 2014. The package must be sealed and clearly labeled on the outside indicating it is in response to RFP 215004.*** If any confidential materials are included, in accordance with the requirements of Section 2.3.2, they must be submitted on a separate CD or USB flash drive.

Offeror is solely responsible for assuring delivery to the reception desk by the designated time. The State will not be accepting facsimile responses to this RFP.

1.6.5 Late Proposals. ***Regardless of cause, the State shall not accept late proposals. Such proposals will automatically be disqualified from consideration.*** Offeror may request the State return the proposal at Offeror's expense or the State will dispose of the proposal if requested by the offeror. (See Administrative Rules of Montana (ARM) 2.5.509.)

1.7 COSTS/OWNERSHIP OF MATERIALS

1.7.1 State Not Responsible for Preparation Costs. Offeror is solely responsible for all costs it incurs prior to contract execution.

1.7.2 Ownership of Timely Submitted Materials. The State shall own all materials submitted in response to this RFP.

SECTION 2: RFP STANDARD INFORMATION

2.1 AUTHORITY

The RFP is issued under 18-4-304, Montana Code Annotated (MCA) and ARM 2.5.602. The RFP process is a procurement option allowing the award to be based on stated evaluation criteria. The RFP states the relative importance of all evaluation criteria. The State shall use only the evaluation criteria outlined in this RFP.

2.2 OFFEROR COMPETITION

The State encourages free and open competition to obtain quality, cost-effective services and supplies. The State designs specifications, proposal requests, and conditions to accomplish this objective.

2.3 RECEIPT OF PROPOSALS AND PUBLIC INSPECTION

2.3.1 Public Information. Subject to exceptions provided by Montana law, all information received in response to this RFP, including copyrighted material, is public information. Proposals will be made available for public viewing and copying shortly after the proposal due date and time. The exceptions to this requirement are: (1) bona fide trade secrets meeting the requirements of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA, that have been properly marked, separated, and documented; (2) matters involving individual safety as determined by the State; and (3) other constitutional protections. See 18-4-304, MCA. The State provides a copier for interested parties' use at \$0.10 per page. The interested party is responsible for the cost of copies and to provide personnel to do the copying.

2.3.2 Procurement Officer Review of Proposals. Upon opening the proposals in response to this RFP, the procurement officer will review the proposals for information that meets the exceptions in Section 2.3.1, providing the following conditions have been met:

- Confidential information (including any provided in electronic media) is clearly marked and separated from the rest of the proposal.
- The proposal does not contain confidential material in the cost or price section.
- An affidavit from the offeror's legal counsel attesting to and explaining the validity of the trade secret claim as set out in Title 30, chapter 14, part 4, MCA, is attached to each proposal containing trade secrets. Counsel must use the State of Montana "Affidavit for Trade Secret Confidentiality" form in requesting the trade secret claim. This affidavit form is available on the OneStop Vendor Information website at: <http://svc.mt.gov/gsd/OneStop/GSDDocuments.aspx> or by calling (406) 444-2575.

Information separated out under this process will be available for review only by the procurement officer, the evaluator/evaluation committee members, and limited other designees. Offerors shall pay all of its legal costs and related fees and expenses associated with defending a claim for confidentiality should another party submit a "right to know" (open records) request.

2.4 CLASSIFICATION AND EVALUATION OF PROPOSALS

2.4.1 Initial Classification of Proposals as Responsive or Nonresponsive. The State shall initially classify all proposals as either "responsive" or "nonresponsive" (ARM 2.5.602). The State may deem a proposal nonresponsive if: (1) any of the required information is not provided; (2) the submitted price is found to be excessive or inadequate as measured by the RFP criteria; or (3) the proposal does not meet RFP requirements and specifications. The State may find any proposal to be nonresponsive at any time during the procurement process. If the State deems a proposal nonresponsive, it will not be considered further.

2.4.2 Determination of Responsibility. The procurement officer will determine whether an offeror has met the standards of responsibility consistent with ARM 2.5.407. An offeror may be determined nonresponsive at any time during the procurement process if information surfaces that supports a

nonresponsible determination. If an offeror is found nonresponsible, the procurement officer will notify the offeror by mail. The determination will be included within the procurement file.

2.4.3 Evaluation of Proposals. An evaluator/evaluation committee will evaluate all responsive proposals based on stated criteria and recommend an award to the highest scoring offeror. The evaluator/evaluation committee may initiate discussion, negotiation, or a best and final offer. In scoring against stated criteria, the evaluator/evaluation committee may consider such factors as accepted industry standards and a comparative evaluation of other proposals in terms of differing price and quality. These scores will be used to determine the most advantageous offering to the State. If an evaluation committee meets to deliberate and evaluate the proposals, the public may attend and observe the evaluation committee deliberations.

2.4.4 Completeness of Proposals. Selection and award will be based on the offeror's proposal and other items outlined in this RFP. Proposals may not include references to information such as Internet websites, unless specifically requested. Information or materials presented by offerors outside the formal response or subsequent discussion, negotiation, or best and final offer, if requested, will not be considered, will have no bearing on any award, and may result in the offeror being disqualified from further consideration.

2.4.5 Evaluator/Evaluation Committee Recommendation for Contract Award. The evaluator/evaluation committee will provide a written recommendation for contract award to the procurement officer that contains the scores, justification, and rationale for the decision. The procurement officer will review the recommendation to ensure its compliance with the RFP process and criteria before concurring with the evaluator's/evaluation committee's recommendation.

2.4.6 Request for Documents Notice. Upon concurrence with the evaluator's/evaluation committee's recommendation, the procurement officer will request from the highest scoring offeror the required documents and information, such as insurance documents, contract performance security, an electronic copy of any requested material (e.g., proposal, response to clarification questions, and/or best and final offer), and any other necessary documents. Receipt of this request does not constitute a contract and **no work may begin until a contract signed by all parties is in place.** The procurement officer will notify all other offerors of the State's selection.

2.4.7 Contract Execution. Upon receipt of all required materials, a contract (Appendix B) incorporating the Standard Terms and Conditions (Appendix A), as well as the highest scoring offeror's proposal, will be provided to the highest scoring offeror for signature. The highest scoring offeror will be expected to accept and agree to all material requirements contained in Appendices A and B of this RFP. If the highest scoring offeror does not accept all material requirements, the State may move to the next highest scoring offeror, or cancel the RFP. Work under the contract may begin when the contract is signed by all parties.

2.5 STATE'S RIGHTS RESERVED

While the State has every intention to award a contract resulting from this RFP, issuance of the RFP in no way constitutes a commitment by the State to award and execute a contract. Upon a determination such actions would be in its best interest, the State, in its sole discretion, reserves the right to:

- Cancel or terminate this RFP (18-4-307, MCA);
- Reject any or all proposals received in response to this RFP (ARM 2.5.602);
- Waive any undesirable, inconsequential, or inconsistent provisions of this RFP that would not have significant impact on any proposal (ARM 2.5.505);
- Not award a contract, if it is in the State's best interest not to proceed with contract execution (ARM 2.5.602); or
- If awarded, terminate any contract if the State determines adequate state funds are not available (18-4-313, MCA).

SECTION 3: SCOPE OF SERVICES

3.1 BACKGROUND

The Montana Department of Environmental Quality's (DEQ) Planning, Prevention, and Assistance Division (PPAD) is seeking a contractor to develop a business case describing the viability of a statewide Nutrient Trading Program for Montana. The basis for nutrient trading is described ARM 17.30.1701, which incorporates by reference [Circular DEQ-13 Montana's Policy For Nutrient Trading](#).

3.2 GENERAL REQUIREMENTS

3.2.1 Business Case for Montana's Nutrient Trading Program. Offeror shall develop a business case to determine if a nutrient trading program is viable as private for profit or non-profit, independent, market-based program operating within the State of Montana. The business case must provide an estimate for a one-time-only investment by the State to launch the nutrient trading program and partnership.

3.2.2 Business Case Format. Offeror must describe the intended format used for development of the business case. The format must include, at a minimum, the following elements:

- Project Lead/Team
- Project Background
- Research/Development Methodology
- Project Viability
- Startup Costs (one-time-only state investment)
- Self-Sustainability
- Implementation Timeline
- Consequence of Non-viability
- Next Steps (Nutrient Trading Partnership)

3.2.3 Deliverables/Timeline. Contractor shall submit to the State the following deliverables:

- Draft of Montana Nutrient Trading Program Business Case to DEQ Contract Manager within 2 months of contract award. Draft document shall be submitted in electronic format to the Contract Manager in Microsoft Word or portable document format (.pdf) either via email or on compact disk (CD) or universal serial bus (USB) drive via regular mail.
- Final Montana Nutrient Trading Program Business Case to DEQ Contract Manager within 2 weeks of receipt of the State's comments/changes to the Draft Business Case. Final document shall be submitted in electronic format to the Contract Manager in Microsoft Word or portable document format (.pdf) either via email or on compact disk (CD) or universal serial bus (USB) drive via regular mail.

3.2.3 Acceptance Criteria. Deliverables will be reviewed by State staff and deemed acceptable when staff have determined they have met the requirement noted above.

SECTION 4: OFFEROR QUALIFICATIONS

All subsections of Section 4 not listed in the "Instructions to Offerors" on page 3 require a response. Restate the subsection number and the text immediately prior to your written response.

4.1 STATE'S RIGHT TO INVESTIGATE AND REJECT

The State may make such investigations as deemed necessary to determine the offeror's ability to perform the services specified. The State reserves the right to reject a proposal if the information submitted by, or investigation of, the offeror fails to satisfy the State's determination that the offeror is properly qualified to perform the obligations of the contract. *This includes the State's ability to reject the proposal based on negative references.*

4.2 OFFEROR QUALIFICATIONS

To enable the State to determine the capabilities of an offeror to perform the services specified in the RFP, the offeror shall respond to the following regarding its ability to meet the State's requirements. **THE RESPONSE, "(OFFEROR'S NAME) UNDERSTANDS AND WILL COMPLY," IS NOT APPROPRIATE FOR THIS SECTION.**

NOTE: Each item must be thoroughly addressed. Offerors taking exception to any requirements listed in this section may be found nonresponsive or be subject to point deductions.

4.2.1 References. Offeror shall provide a minimum of **two** references that are currently using or have previously used services of the type proposed in this RFP. The references may include state governments or universities for whom the offeror, preferably within the last **five** years, has successfully completed the development of, or is currently operating, a nutrient trading program. At a minimum, the offeror shall provide the company name, location where the services were provided, contact person(s), contact telephone number, e-mail address, and a complete description of the services provided, and dates of service. These references may be contacted to verify offeror's ability to perform the contract. The State reserves the right to use any information or additional references deemed necessary to establish the ability of the offeror to perform the contract. Negative references may be grounds for proposal disqualification.

4.2.2 Company Profile and Experience. Offeror shall provide documentation establishing the individual or company submitting the proposal has the qualifications and experience to provide the services specified in this RFP, including, at a minimum:

- a detailed description of any similar past projects, including the service type and dates the services were provided;
- the client for whom the services were provided; and
- a general description of the firm including its primary source of business, organizational structure and size, number of employees, years of experience performing services similar to those described within this RFP.

4.2.3 Resumes. A resume or summary of qualifications, work experience, education, and skills must be provided for all key personnel, including any subcontractors, who will be performing any aspects of the contract. Include years of experience providing services similar to those required; education; and certifications where applicable. Identify what role each person would fulfill in performing work identified in this RFP.

SECTION 5: COST PROPOSAL

All subsections of Section 5 not listed in the "Instructions to Offerors" on page 3 require a response. Restate the subsection number and the text immediately prior to your written response.

Due to the short time frame for performance of these services, Contractor shall be paid for all services upon DEQ's acceptance of the Final Business Case.

Offeror's proposal shall be inclusive of all cost associated with development of the business case to include all direct (communication, printing, travel, per diem ,lodging, etc.), and indirect costs.

SECTION 6: EVALUATION PROCESS

6.1 BASIS OF EVALUATION

The evaluator/evaluation committee will review and evaluate the offers according to the following criteria based on a **total number of 100 points**.

The **References** will be evaluated on a pass/fail basis. Any offeror receiving a "fail" may be eliminated from further consideration. The **Company Profile and Experience, Resumes, and Provision of Services** portions of the proposal will be evaluated based on the following Scoring Guide. The **Cost Proposal** will be evaluated based on the formula set forth below.

SCORING GUIDE

In awarding points to the evaluation criteria, the evaluator/evaluation committee will consider the following guidelines:

Superior Response (95-100%): A superior response is an exceptional reply that completely and comprehensively meets all of the requirements of the RFP. In addition, the response may cover areas not originally addressed within the RFP and/or include additional information and recommendations that would prove both valuable and beneficial to the agency.

Good Response (75-94%): A good response clearly meets all the requirements of the RFP and demonstrates in an unambiguous and concise manner a thorough knowledge and understanding of the project, with no deficiencies noted.

Fair Response (60-74%): A fair response minimally meets most requirements set forth in the RFP. The offeror demonstrates some ability to comply with guidelines and requirements of the project, but knowledge of the subject matter is limited.

Failed Response (59% or less): A failed response does not meet the requirements set forth in the RFP. The offeror has not demonstrated sufficient knowledge of the subject matter.

6.2 EVALUATION CRITERIA

Category	Section of RFP	Point Value
References		Pass/Fail
1. References (Complete contact information provided)	4.2.1	Pass/Fail
Provision of Services		30% of points for a possible 30 points
2. Methods	4.2.2 / 3.2	
3. Work Plan	4.2.2 / 3.2	
4. Timeline	4.2.2 / 3.2	
Company Profile, Experience and Resumes		40% of points for a possible 40 points
5. Years of Relevant Experience	4.2.2	
6. Relevant Past Projects	4.2.2	
7. Staff Qualifications	4.2.3	
Cost Proposal		30% of points for a possible 30 points
8. Cost Proposal	5.0	

Lowest overall cost receives the maximum allotted points. All other proposals receive a percentage of the points available based on their cost relationship to the lowest. Example: Total possible points for cost are 30. Offeror A's cost is \$20,000. Offeror B's cost is \$30,000. Offeror A would receive 30 points. Offeror B would receive 20 points ($(\$20,000/\$30,000) = 67\% \times 30 \text{ points} = 20$).

$$\frac{\text{Lowest Responsive Offer Total Cost}}{\text{This Offeror's Total Cost}} \times \text{Number of available points} = \text{Award Points}$$

APPENDIX A: STANDARD TERMS AND CONDITIONS

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES: The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

ALTERATION OF SOLICITATION DOCUMENT: In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

DEBARMENT: The contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

FACSIMILE RESPONSES: Facsimile responses will be accepted for invitations for bids, small purchases, or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

FAILURE TO HONOR BID/PROPOSAL: If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to ensure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

RECIPROCAL PREFERENCE: The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://gsd.mt.gov/ProcurementServices/preferences.mcp.x>.

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify the State of any ambiguity, inconsistency, or error which they may discover upon examination of a solicitation document.

APPENDIX B: CONTRACT

THIS CONTRACT is entered into by and between the State of Montana, Department of Environmental Quality (State), and **insert name of contractor** (Contractor), for the purpose of developing a business case assessing the viability of a Nutrient Trading Program for Montana. This Contract is entered into in accordance with Title 18, Montana Code Annotated (MCA), and the Administrative Rules of Montana (ARM), Title 2, chapter 5.

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1. Contract Term. The contract's term is from the date of contract execution, with the effective date being the latter of the two signatures, through December 31, 2014, unless terminated earlier as provided in this contract. In no event is this contract binding on the State unless the State's authorized representative has signed it. The State's authorized signatory for this contract is the Contracts Officer for the Department of Environmental Quality.

2. SERVICES AND/OR SUPPLIES

2.1. Contractor shall provide the State the services, more fully described in Attachment A Scope of Work, attached hereto and incorporated herein by reference. **(Attachment A to be developed from Offeror's response to RFP 215004)**

2.2. Contractor shall include the Contract number on all invoices, packing lists, packages, and correspondence pertaining to the Contract. If the number is not provided, the State is not obligated to pay the invoice.

3. WARRANTIES

3.1. Warranty of Services. Contractor warrants that the services provided conform to the contract requirements, including all descriptions, specifications and attachments made a part of this contract. The State's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this contract, at law, or in equity, the State may, at Contractor's expense, require prompt correction of any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this contract in the manner and to the same extent as services originally furnished.

4. CONSIDERATION/PAYMENT

4.1. In consideration of services rendered pursuant to the Contract, the State agrees to reimburse Contractor up to a maximum of **\$xx,xxx.xx** in accordance with Contractor's proposed costs submitted under Request for Proposal 215004.

4.2. Contractor shall bill the State upon notice of acceptance from the State.

4.3. In accordance with §17-8-242, MCA, the State shall reimburse Contractor within 30 days after receipt of invoice contingent upon the following:

4.3.1. Payment for questioned costs may be withheld pending resolution and may require rebilling by Contractor or submittal of additional documentation, including any records required to be kept by Contractor;

4.3.2. The State may withhold payment if Contractor has not performed in accordance with the Contract. Such withholding cannot be greater than the additional costs to the State caused by Contractor's lack of performance.

4.4. Contractor may not use the funds received under this Contract to supplant other Contractor budgeted expenses or funds.

5. ACCOUNTING, AUDIT AND RETENTION OF RECORDS

5.1. Contractor shall maintain books, records, documents, other evidence directly pertinent to performance of work under this Contract and current accounting for all funds received and expended pursuant to this Contract in accordance with generally accepted accounting principles. Contractor's accounting system must be able to allocate costs associated with this Contract in a manner that keeps these costs separate from the costs of other contracts.

5.2. The State, the Legislative Auditor, the Legislative Fiscal Analyst, and the Comptroller General of the United States, or their authorized agents, have the right of access to accounting records of Contractor for purposes of making an inspection, audit, excerpts, or transcripts of funds received and expended by Contractor pursuant to this Contract. Contractor shall maintain the records at the address of its liaison in Section 17 and allow the entities in the preceding sentence to have access to them for review and copying during normal business hours for as long as the Contractor retains the records under paragraph 6.5. This Contract may be terminated by the State upon any refusal of Contractor to allow access to such records.

5.3. Contractor shall disclose all information and reports resulting from access to the records maintained in paragraph 5.1 to any of the agencies referred to in paragraph 5.2.

5.4. Audits conducted under this section must be in accordance with generally accepted auditing standards as established by the American Institute of Certified Public Accountants and with established procedures and guidelines of the reviewing or auditing agency.

5.5. All books, records, reports, accounting, and other documents maintained by Contractor under this Contract must be retained for a period of eight years after either the completion date of this Contract, or the conclusion of any litigation, claim, audit or exception relating to this Contract taken by the State or a third party, whichever is later. Contractor may not destroy any records without first offering the records to the State.

5.6. In the event that an audit shows that Contractor has not complied with federal or state laws and rules concerning the handling and expenditure of the funds received under this Contract, including any grant-related income, Contractor must correct the areas of non-compliance within six months after DEQ receives the audit report.

6. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

In accordance with §18-4-141, MCA, Contractor may not assign, transfer, or subcontract any portion of this contract without the State's prior written consent. Any subcontracting of services under this Contract must be done in a competitive manner and ensure that subcontractor rates are justified and documented in accordance of Level IV of the Executive Schedule (<http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages>). Contractor is responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and the State under this contract.

7. HOLD HARMLESS/INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the State, its elected and appointed officials, officers, agents, directors, and employees from and against all claims, damages, losses and expenses, including the cost of defense thereof, to the extent caused by or arising out of Contractor's negligent acts, errors, or omissions in work or services performed under this Contract, including but not limited to, the negligent acts, errors, or omissions of any Subcontractor or anyone directly or indirectly employed by any Subcontractor for whose acts Subcontractor may be liable.

8. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Neither Contractor nor its employees are employees of the State of Montana. Contractor and any subcontractor shall comply with the provisions of the Montana Workers' Compensation Act while

performing work for the State of Montana in accordance with §39-71-401, §39-71-405, and §39-71-417, MCA. Contractor shall submit proof of compliance to the State in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. This insurance/exemption must be valid for the entire contract term and any renewal. Upon expiration of insurance/exemption, Contractor shall send a renewal document to the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

9. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, the Montana Human Rights Act, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Clean Water Act (CWA), and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. Any subletting or subcontracting by Contractor subjects subcontractors to the same provision. In accordance with §49-3-207, MCA, Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

10. REQUIRED INSURANCE

10.1. General Requirements. Contractor shall maintain for the duration of this contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

10.2. Primary Insurance. Contractor's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

10.3. Specific Requirements for Commercial General Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$500,000 per occurrence and \$1,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the State's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

10.4. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the State. At the request of the State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

10.5. Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the State. Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

11. DISABILITY ACCOMMODATIONS

The State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to the State's Contract Liaison, identified herein.. Interested parties should provide as much advance notice as possible.

12. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED

Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired (§18-5-603, MCA.). Contact the State at 406-444-2929 for more information concerning nonvisual access standards.

13. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with §35-1-1026 and §35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov/Business/index.asp>.

14. INTELLECTUAL PROPERTY/OWNERSHIP

14.1. Mutual Use. Contractor shall make available to the State, on a royalty-free, non-exclusive basis, all patent and other legal rights in or to inventions first conceived and reduced to practice, or created in whole or in part under this contract, if such availability is necessary for the State to receive the benefits of this contract. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use copyrightable property created under this contract. This mutual right includes (i) all deliverables and other materials, products, modifications that Contractor has developed or prepared for the State under this contract; (ii) any program code, or site- related program code that Contractor has created, developed, or prepared under or primarily in support of the performance of its specific obligations under this contract; and (iii) manuals, training materials, and documentation. All information described in (i), (ii), and (iii) is collectively called the "Work Product".

14.2. Title and Ownership Rights. The State retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by the State (the "Content"), but grants Contractor the right to access and use Content for the purpose of complying with its obligations under this contract and any applicable statement of work.

14.3. Ownership of Work Product. Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as the State may reasonably request, to perfect the State's ownership of any Work Product.

14.4. Copy of Work Product. Contractor shall, at no cost to the State, deliver to the State, upon the State's request during the term of this contract or at its expiration or termination, a current copy of all Work Product in the form and on the media in use as of the date of the State's request, or such expiration or termination.

14.5. Ownership of Contractor Pre-Existing Materials. Contractor retains ownership of all literary or other works of authorship (such as software programs and code, documentation, reports, and

similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Contractor owns at the time this contract is executed or otherwise developed or acquired independent of this contract and employed by Contractor in connection with the services provided to the State (the "Contractor Pre-existing Materials"). Contractor Pre-existing Materials are not Work Product. Contractor shall provide full disclosure of any Contractor Pre-Existing Materials to the State before its use and to prove its ownership. If, however, Contractor fails to disclose to the State such Contractor Pre-Existing Materials, Contractor shall grant the State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-Existing Materials embedded in the Work Product to the extent such Contractor Pre-Existing Materials are necessary for the State to receive the intended benefit under this contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in **Section 19.3** or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware it provides under this contract.

15. PATENT AND COPYRIGHT PROTECTION

15.1. Third-Party Claim. If a third party makes a claim against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor shall indemnify the State against all costs, damages, attorney fees, and all other costs and expenses of litigation that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

15.2. Product Subject of Claim. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine whether the contract has been breached.

16. CONFLICT OF INTEREST

16.1. For the purposes of the Montana Code of Ethics, Contractor and each of its employees and subcontractors is a "public employee" for the purposes of this Section. As such, Contractor and each of its employees and subcontractors is subject to the requirements of Title 2, Chapter 2, MCA, regarding conflicts of interest, including but not limited to sections §2-2-104, §2-2-105, §2-2-121, and §2-2-201, MCA.

16.2. If the State discovers that an employee of Contractor is in violation of this Section, the State may, after consulting with Contractor, terminate this Contract or take other appropriate measures to address the conflict and Contractor shall reimburse the State for any services the State requires be performed by another Contractor that duplicate the services performed by the employee who violated this Section.

17. DISCLOSURE

17.1. Contractor shall notify the State of any actual, apparent, or potential conflict of interest with regard to any individual working on a work assignment or having access to information regarding a subcontract. Notification of any conflict of interest shall include both organizational conflicts of interest and personal conflicts of interest (which are defined as the same types of relationships as organizational conflicts of interest, but applicable to an individual). In the event that a personal conflict of interest exists, the individual who is affected shall be disqualified from taking part in any way in the performance of the assigned work that created the conflict of interest situation.

17.2. Contractor certifies that it has identified all current employees and proposed subcontractor's employees that will perform work under this Contract and that have worked for the State of Montana in the last two years prior to submitting the solicitation request which resulted in the award of this Contract. Contractor further certifies that no former employee of the State of Montana or local

government may work under this Contract for a period of twelve months after voluntary termination of public employment, if by working under the Contract the employee will take direct advantage, unavailable to others, of matters with which the employee was directly involved during the employee's public employment. Pursuant to §2-2-201, MCA, a former employee of state or local government may not, within 6 months following the termination of public employment, contract or be employed by an employer who contracts with the State of Montana or any of its subdivisions involving matters with which the former public employee was "directly involved", as defined in §2-2-201, MCA, during employment. Contractor further certifies it shall identify any new employees hired during this Contract that will perform work under this Contract and that have worked for the State of Montana in the last two years prior to submitting the solicitation request which resulted in the award of this Contract. Disclosure in all cases shall include the name of the agency and the nature of work performed by the employee.

18. CONTRACT TERMINATION

18.1. Termination for Cause with Notice to Cure Requirement. Either party may terminate this contract in whole or in part for failure of the other party to materially perform any of the services, duties, terms, or conditions contained in this contract after giving the other party written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

18.2. Reduction of Funding. In accordance with §18-4-313(4), MCA, the State must terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this contract as required by law. The State shall provide Contractor the date the State's termination shall take effect. The State shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

18.3. Any termination of this Contract is subject to the exception that Section 5 (ACCOUNTING, AUDIT AND RETENTION OF RECORDS), relating to retention of and access to records, remains in effect.

19. EVENT OF BREACH – REMEDIES

19.1. Event of Breach by Contractor. Any one or more of the following Contractor acts or omissions constitute an event of material breach under this contract:

19.1.1. products or services furnished fail to conform to any requirement;

19.1.2. failure to submit any report required by this contract;

19.1.3. failure to perform any of the other terms and conditions of this contract, including but not limited to beginning work under this contract without prior State approval and breaching Section 24.1 **Technical or Contractual Problems** obligations; or

19.1.4. voluntary or involuntary bankruptcy or receivership.

19.2. Event of Breach by State. The State's failure to perform any material terms or conditions of this contract constitutes an event of breach.

19.3. Actions in Event of Breach.

19.3.1. Upon a material breach by either party, the non-breaching party may:

19.3.1.1. terminate this contract after giving written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30-days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period; or

19.3.1.2. treat this contract as materially breached and, except as the remedy is limited in this contract, pursue any of its remedies under this contract, at law or in equity.

20. FORCE MAJEURE

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than 5 working days after the onset. If the notice is not provided within the 5 day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this contract, unless the parties mutually agree that the obligation is excused because of the condition.

21. WAIVER OF BREACH

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

22. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without the State Procurement Bureau's prior written consent. Products or services provided that do not conform to the contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

23. LIAISONS AND SERVICE OF NOTICES

23.1. Contract Liaisons. All project management and coordination on the State's behalf must be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison who will provide the single point of contact for management and coordination of Contractor's work. All work performed under this contract must be coordinated between the State's liaison and Contractor's liaison.

Mark Bostrom is the State's liaison.
PO Box 200901
Helena, MT 59620-0901
Telephone: 406-444-2680
Fax: 406-444-6836
E-mail: mbostrom@mt.gov

name is Contractor's liaison.
(Address):
(City, State, ZIP):
Telephone:
Cell Phone:
Fax:
E-mail:

23.2. Notifications. The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three (3) business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

24. MEETINGS

24.1. Technical or Contractual Problems. The Contractor may be required to attend a pre-contract meeting in which the procedures for implementing the Contract will be discussed and agreed upon. The Contractor may also be required to attend a post-contract meeting with the State's Liaison named in the Contract. Contractor shall meet with the State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the contract term or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. The State may request the meetings as problems arise and will be coordinated by the State. The State shall provide Contractor a minimum of three full working-days-notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the contract.

25. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, if the contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor must provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this contract or particular work under this contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay Contractor for any resources utilized in performing such transition assistance at the most current contract rates. If there are no established Contract rates, then the rate must be mutually agreed upon. If the State terminates a project, or this contract for cause, then the State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages the State may have sustained as a result of Contractor's breach.

26. CHOICE OF LAW AND VENUE

In accordance with §18-1-401, MCA, Montana law governs this contract. Any litigation concerning this bid, proposal, or contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

27. TAX EXEMPTION

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

28. SEVERABILITY CLAUSE

A declaration by any court or any other binding legal source that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually and materially dependent.

29. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

29.1. Contract. This contract consists of **insert number** numbered pages, any Attachments as required, Solicitation #215004, as amended, and Contractor's response, as amended. In the case of

dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

29.2. Entire Agreement. These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

30. WAIVER

The State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

31. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

CONTRACTOR

DATE

BY: _____
NAME, Title
Address
Federal Employer's ID No.: NUMBER

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

DATE

BY: _____
VICKI J. WOODROW, Contracts Officer
Financial Services
Metcalf Building, Room 003
1520 E. Sixth Avenue
Helena, MT 59620-0901

Approved as to Legal Content:

DATE

BY: _____
DEQ Attorney